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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529-2090

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U.S. Citizenship
and Immigration
Services

L-2

FILE: [REDACTED]
MSC 01 353 61868

Office: NEW YORK

Date: **MAR 11 2009**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by LIFE Act Amendments*, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "J. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to demonstrate that he resided in the United States in a continuous, unlawful status from before January 1, 1982, through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant asserts that he submitted a plethora of evidence to prove his eligibility and addressed all the issues raised in the director's Notice of Intent to Deny (NOID). He asserts that the director did not give adequate weight to the submitted evidence. He requests that the director's decision be reversed and his appeal be given a favorable adjudication. No additional evidence was submitted. The AAO has reviewed all of the evidence and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.¹

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date through May 4, 1988. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under section 1104 of the LIFE Act. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all evidence

¹ The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); see also, *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. See, e.g. *Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.12(f). 8 C.F.R. § 245a.2(d)(6).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* at 80. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application.

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982, and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and resided in an unlawful status during the requisite period consists of attestations from individuals claiming to know the applicant. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed. The AAO has reviewed each document to determine the applicant’s eligibility; however, the AAO will not quote each witness statement in this decision.

The record contains affidavits that all state that the affiants have known the applicant for years and that they attest to the applicant being physically present in the United States during the required period. These affidavits fail, however, to establish the applicant’s continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of

all evidence produced by the applicant will be judged according to its probative value and credibility.

None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they have a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The record includes a declaration from [REDACTED] public information at Masjid Malcolm Shabazz. The declaration fails to meet the requirements under the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The declarant failed to state where the applicant resided during membership period, established how the author knows the applicant, or established the origin of the information being attested to. Given the lack of relevant details, this declaration provides minimal probative value as evidence of the applicant's residence in the United States during the requisite period.

It is also noted that the record contains several inconsistencies between the applicant's own statements and those of his affiants. The record contains a Form G-325A, Biographic Information, signed by the applicant under severe penalties for knowingly and willfully falsifying or concealing a material fact. On his Form G-325A, the applicant indicated that his last address outside of the United States for more than one year was a Gambian address, where he resided from October 1957 to February 1993. The applicant's own testimony indicates that he did not reside in the United States until 1993. This information directly contradicts the applicant's claim to have resided in the United States throughout the requisite period, as well as the statements of his affiants.

In response to the director's NOID, the applicant asserted that the director's contention was purely unfounded because he was issued a U.S. visa in 1987 and entered the United States in November 1987. The record contains a copy of the applicant's passport, issued to the applicant in Banjul, Gambia, on June 19, 1987. The passport contains two U.S. visas issued to the applicant. The first visa was issued to the applicant on October 2, 1987, in Banjul. This visa contains a U.S. admittance stamp, dated November 25, 1987. The second visa was issued to the applicant on January 28, 1993, in Banjul.

While this evidence establishes that the applicant entered the United States in 1987, it does not reconcile the discrepancy regarding the applicant's place of residence prior to 1987. The

applicant fails to reconcile the fact that his passport was issued in Gambia during the requisite period. In response to the NOID, the applicant asserted that his passport was issued through an agent and he only went to Gambia to retrieve his visa. However, the applicant has submitted no independent, objective evidence in support of his assertion. On the contrary, the record contains evidence that the applicant was in Gambia prior to 1987. The record includes two certificates in the applicant's name from the [REDACTED] in Gambia. The certificates indicate that the applicant had perfect attendance at the school and completed studies in November 1986. This evidence further contradicts the applicant's claim to have resided in the United States prior to 1987.

The noted inconsistencies are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. As stated previously, doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho, supra.*

Based upon the foregoing, the documents submitted in support of the applicant's claim have been found to be inconsistent or to have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period. The AAO finds that it is more likely than not that the applicant first entered the United States in 1987.

Therefore, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence from such date through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. Given this, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.